## REMARKS

This is in response to the *Non-Final* Office Action, dated January 11, 2005, where the Examiner has rejected claims 1-2, 4-38 and 40-48. By the present amendment, claims 1, 30-36, 38, 40-43 and 45- 48 have been amended. After the present amendment, claims 1-2, 4-38 and 40-48 are pending in the present application. Reconsideration and allowance of pending claims 1-2, 4-33, 38 and 40-48 in view of the following remarks are respectfully requested.

### A. Objection to the Declaration

The Examiner has objected to the oath/declaration stating that the signature of inventor Dean Grumlose is not dated. Applicant respectfully submits that inventor Dean Grumlose is no longer in the employment of applicant. Applicant will use reasonable diligence to obtain a newly executed and dated oath/declaration from inventor Dean Grumlose.

### B. Rejection of Claims 1, 2, 4, 5, 30 and 33 under 35 USC § 103(a)

The Examiner has rejected claims 1, 2, 4, 5, 30 and 33, under 35 USC § 103(a), as being unpatentable over Scott, et al. (USPN 5,311,596) ("Scott") in view of Kalmanek, et al. (USPN 6,757,290) ("Kalmanek"). Applicant respectfully disagrees.

In response to the previous Office Action, applicant pointed out a fundamental difference between steps 320-360 in Fig. 3 of Scott, and claim 1 of the present application. As discussed, the fundamental difference is that prior to steps 320-360 in Fig. 3 of Scott, in step 304, the modems have already finished the physical handshaking process and established the data connection and, thus, the subsequent steps do not occur during the physical handshaking process.

This significant difference between the invention of claim 1 and Scott is explained in the present application, pages 6-7:

> One potential problem that may occur is that non-compatible modems might choose to copy the specific identification codes (or the encoding algorithm) without realizing that such codes may impact the identification process associated with compatible modems. This could lead to misidentification of clients in the field, or misattribution of connectivity problems. One possible solution that could address this concern is to have the central site modem transmit a pseudo-randomly generated code word that is different on each call during the V.8bis exchange. The client modem could run the received code word through a pre-determined scrambler and transmit it back to the central site. The central site would compare the received code word with what it expects to receive. While it is possible for non-compatible modem manufacturers to discover such encoding techniques, such a discovery would not be easy and would be a time consuming effort. Indeed, the scrambler polynomial and the operation of the identification coding need not be publicized.

However, Scott is directed at solving a totally different problem. As explained by Scott, systems that perform the authentication process only once at the beginning of a data connection are inadequate, because they are susceptible to "spoofing", and can be taken over by intruders. (Col. 1, line 42- Col.2, line 27.) To provide security against an active wire tap and spoofing, Scott teaches that access security be provided to a PSTN data connection by a continuous re-authentication procedure between the modems. Col. 2, lines 30-40.) Scott teaches that such continuous re-authentication procedure can occur by using a side channel of the data connection to periodically or aperiodically send authentication information during the duration of the data connection. (Col. 2, lines 40-45.) Further, the Examiner's attention is directed Figs. 3 and 5, the transition from step 370 to 325. As shown in Figs. 3 and 5, the authentication process continues during the call to prevent a potential security breach by an active wire tap or spoofing.

In the present Office Action, the Examiner acknowledges that Scott does not render claim 1 obvious by itself. However, the Examine has combined Scott with Kalmanek as a basis for stating that Kalmanek teaches that the following can occur during the handshaking process: "transmitting a pseudo-randomly generated code word to said second modem during said physical handshaking process; receiving a scrambled code word from said second modem, wherein said scrambled code word is generated by scrambling said code word during said physical handshaking process; analyzing said scrambled code word during said physical handshaking process; determining if said second modem meets a compatibility criteria based on said analyzing during said physical handshaking process." Applicant respectfully submits that various functions that the Examiner refers to Fig. 2 of Kalmanek do not come close to disclosing, teaching or suggesting that the identification process of claim 1 can occur during physical handshaking process. Even more importantly, applicant respectfully submits that Scott teaches away from combining Scott with any reference that performs an identification process during the physical handshaking process. This is because, Scott teaches and explicitly requires that the identification process to occur continuously during the call, and not once. According to Scott, the communication system becomes susceptible to spoofing if the identification process does not occur continuously (periodically or aperiodically) during the call. Since the physical handshaking process occurs only once at the beginning of each modem call, one of ordinary skill in the art would not implement Scott's identification process during the physical handshaking process, because Scott's identification process must occur continuously during the call to be effective.

Notwithstanding the foregoing, applicant has amended claim 1 to further clarify an inventive aspect of the present application. As amended, claim 1 states "wherein said identification data are indicative of a manufacturer identity of said first modem and a particular modem version number of said first modem." Applicant respectfully submits that the cited references fail to disclose such limitations in addition to the other limitations of claim 1, as discussed above. Accordingly, it is respectfully submitted that claim 1 and its dependent claims 2, 4 and 5 should be allowed.

Further, applicant notes that the Examiner has rejected claim 2 of the present application by simply referring to step 320 of Fig. 3 in Scott (retrieve key based on calling modem's ID). However, it is respectfully submitted that retrieving a key based on calling modem's ID does not come close to "identification data comprises information selected from the group consisting of a platform identifier, a controller revision, a DSP revision, and a firmware revision." Applicant respectfully submits that Scott does not discuss such limitations, whatsoever.

Moreover, with respect to rejection of claim 30, Scott merely discloses Modem ID 610 in Fig. 4, and fails to disclose transmitting a first modem manufacturer parameter and receiving a second modem manufacturer parameter. However, the Examiner states that "Challenge 615" in Fig. 4 of Scott discloses "receiving a second modem manufacturer parameter." Applicant respectfully disagrees. There is no teaching in Scott that "Challenge 615" is a modem manufacturer parameter, which is a predetermined number. In fact, "Challenge 615" is a randomly generated number, whereas "Modem ID 610" is a predetermined number assigned to the originating modem. (Col. 4, lines 41-60.) Accordingly, Challenge 615, which is a random number," is not and cannot be a modem manufacturer parameter. Notwithstanding the foregoing;

however, applicant has amended claim 30 for further clarification to state that the first and second modem manufacturer parameters are indicative of a manufacturer identity and a particular modem version number of the first and second modems. Accordingly, it is respectfully submitted that claim 30 and its dependent claim 33 should be allowed.

C. **Rejection of Claims 6-29, 31-32, 38 and 40-48 under 35 USC § 103(a)**

The Examiner has rejected claims 6-29, 31-32, 38 and 40-48, under 35 USC § 103(a), as being unpatentable over Scott in view of in view of Kalmanek, and further in view of Dudek, et al. (USPN 5,208,812) ("Dudek"). Applicant respectfully submits that claims 6-29 depend from claim 1 and claims 31 and 32 depend from claim 30, and they should be allowed at least for the same reasons stated above in conjunction with patentability of claims 1 and 30.

Further, dependent independent claims 38 and 45, and their respective dependent claims, should also be allowed at least for the same reasons stated above in conjunction with patentability of claims 1 and 30.

Applicant further notes that the Examiner has not shown how Dudek's reference to identifying the telepoint company or system with which the handset is registered has any relevance to the modem DSP version and firmware revision in claims 42-43 and 46-47. Applicant respectfully submits that Dudek states that "the LID code may identify the telepoint company or system with which the handset is registered and through which the use wishes to make the telephone call." (Col. 44, lines 33-36.) In other words, the LID code transmitted by the handset does not identify the handset, but the LID code identifies the receiving system. For example, Dudek further states that "the handset 11 will transmit a LID code indicating that it

wishes to make contact with the specific domestic telephone or private exchange system with which it has been registered." (Col. 44, lines 26-29.) In sharp contrast to Dudek, claims 42-43 and 46-47 recite refer to DSP version and firmware revision of the modem, and not the network within which the modem is registered or the like.

### D. Rejection of Claims 34-37 under 35 USC § 103(a)

The Examiner has rejected claims 34-37, under 35 USC § 103(a), as being unpatentable over Dudek in view of Scott.

By the present amendment, applicant has amended independent claim 34 to recite "transmitting first modem manufacturer parameters to said second modem via said secondary channel, wherein said first modem manufacture parameters are indicative of a manufacturer identity of said first modem and a particular modem version number of said first modem; receiving second modem manufacturer parameters from said second modem via said secondary channel, wherein said second modem manufacture parameters are indicative of a manufacturer identity of said second modem and a particular modem version number of said second modem." Accordingly, claim 34 and its dependent claims 35-37 should also be allowed at least for the same reasons stated above in conjunction with patentability of claims 1 and 30.

E. Conclusion

For all the foregoing reasons, an early notice of allowance for claims 1-2, 4-38 and 40-48 pending in the present application is respectfully requested. The Examiner is invited to contact the undersigned for any questions.

Respectfully Submitted;
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